THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24203 OF 1996

DATED: 23-04-2007

Between :

1. Budharaju Venkata Subbaraju and 9 others. ... Petitioners

And

1. The Government of Andhra Pradesh, rep. by the District Collector, Visakhapatnam., And 2 others. ... Respondents

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ORDER :

The petitioners, ten in number, claim to be the owners of the land to an extent of 2 acres situated in Sy.No.462 of Chinnadoddigallu Village, Nakkapalli Mandal, Visakhapatnam District. It is claimed that the ancestor of the petitioners was inducted into possession of the land in question by the then Zamindar of Chemudu Estate sometime in 1866. The family of the petitioners built a temple as well as a building for library in a part of the said land apart from giving a portion of the site for construction of veterinary hospital. It is claimed that by the time of the abolition of Zamindari, the remaining land to an extent of 2 acres was in possession of the forefathers of the petitioners to which they have succeeded in due course. Thus, according to the petitioners, the land in question did not vest in the Government under Section 3 (b) of Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act') but continued to be the private property of their family.

While so, the respondents 2 and 3 attempted to get the land in question surveyed for the purpose of assigning the same to the third parties. Aggrieved by the said action, this writ petition is filed seeking a direction to the respondents not to interfere with the possession of the petitioners in respect of the land admeasuring 2 acres in Sy.No.462 of Chinnadoddigallu Village, Nakkapalli Mandal, Visakhapatnam District and for a further direction not to assign the said land to the third parties.

The contention of the petitioners is that the title of the petitioners in respect of the land in question has not been extinguished by reason of the notification of Chemudu Estate under the Act and consequently the respondents have no right to interfere with the possession of the petitioners in any manner whatsoever.

In the counter-affidavit filed on behalf of the respondents, it is

stated that the land in question has never been in possession of the writ petitioners or their forefathers at any point of time and that the same is not the private property of the petitioners as claimed by them. It is further stated that the land in question was already assigned to 63 persons belonging to the weaker sections.

It is to be noted that out of the said beneficiaries 31 members got themselves impleaded as respondents to the writ petition pleading that they were put in possession of the land in question on 12-11-1996 pursuant to the house site pattas granted in their favour. It is also claimed that the assignments were made in their favour on the basis of a resolution passed by the Gram Panchayat dated 11-8-1993 requesting the Government to allot Ac.2-40 cents of land in Sy.No.462 for construction of houses for weaker sections. Even the library allegedly got constructed by the petitioners was constructed with the funds sanctioned by the Grandhalaya Samstha and Raja Ram Mohan Roy Foundation. Thus, it is contended that the land in question belongs to the Government and the claim made by the petitioners who have nothing to do with the same is misconceived.

A member of the Gram Panchayat by name B.V. Bangar Raju who got himself impleaded as a party-respondent, pleaded that the land in question is being used for communal purposes. The resolution said to have been passed by the Gram Panchayat for assignment in favour of the persons belonging to the weaker sections has been denied and it is contended that since the land had vested with the Gram Panchayat after the advent of the Gram Panchayat Act, 1970, the same cannot be utilised by the State Government in any manner whatsoever without taking the sanction of the Gram Panchayat. Thus, it is contended that the impugned action of the Government in assigning the land belonging to the Gram Panchayat which is being used for communal purposes is arbitrary and illegal.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that though the petitioners claimed that the land in question which is a house-site continued to be their private property and never vested in the Government even after the abolition of the Estates, absolutely no material has been placed before this Court to substantiate the said version. On the other hand, the plea of the petitioners has been disputed by all the respondents.

Since there is a serious dispute as to the very nature of the land and no case is made out to establish that the petitioners had acquired any right in respect of the land in question, a Writ of Mandamus cannot be issued restraining the respondents from utilising the land for a public purpose.

The decisions cited by the learned Counsel for the petitioners namely RENGARAJA IYENGAR v. ACHIKANNU AMMAL[1] and STATE v. R. RANGAIAH[2] wherein it was held that the house-sites in Gramakantham did not stand vested in the Government has no application to the facts of the instant case particularly having regard to the fact that the nature of the land itself is in dispute.

The Writ Petition is accordingly dismissed. No costs.

However, it is made clear that this Court has not expressed any opinion as to the rival claims made with regard to the nature of the land in question and that the petitioners are at liberty to work out the appropriate remedy as available under law for redressal of their grievance if so advised.

G. ROHINI, J.

Dt. 23–04-2007

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[1] 1959 (2) Madras Law Journal 513

[2] AIR 1973 Andhra Pradesh 71